

REMARKS

According to the Examiner, at this time, the case would be in condition for allowance if claims 9,10, and 12 were cancelled. Claims 9,10, and 12 had previously been withdrawn from consideration after Applicants' election with traversal. As this attorney expressed to the Examiner in our telephone conference on 21 July 2003, Applicants strongly assert that claims 9,10, and 12 should be included with, and substantively examined in the present case. Applicants respectfully wish the Examiner to consider the following points in support of their argument:

- ◆ Claims 9 and 10 are directed to a filled composition of conglomerate building material that includes as one ingredient, among other, the additive of claim 1. Claim 12 is directed to the use of the additive of claim 1 as a component in gypsum.
- ◆ Applicants thus seek to have included in one case, not only the additive, the claims covering which (claims 1-3, 5-8 and 11) have already been allowed, but a composition including the same and a use for the additive.
- ◆ This situation directly parallels the situation in another of Applicants' cases, which issued as US Pat. No. 6,572,696 on 3 June 2003. In that case, whose subject matter relates to the same technical field as the present case, independent claim 1 and dependent claims 2-12 are directed to an additive for conglomerate building materials. Claims 13-19 are directed to a material that includes said additive. Thus, US Pat.

No. 6,572,696 was granted and issued with claims of two different categories, using the identical same claim structure and in the identical field as the present case.

- ◆ Applicants' other case was examined not by the present Examiner, but by Ms. Elizabeth Wood. However, the supervisory Examiner was the same as in the present case, namely Mr. Mark Bell.
- ◆ In light of the directly analogous facts, Applicants assert that there is no legitimate objective reason why claims 9,10, and 12 of the present case, or at least claims 9 and 10 directed to the material, should not be included within and examined in the present case. Accordingly, Applicants respectfully request that the Examiner withdraw his request to cancel these claims and that he commences examination on said claims (9,10, and 12).

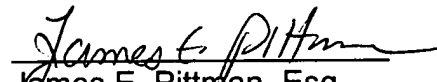
Fees

The fees for a three month extension of time is enclosed herewith. No additional fees are believed necessary for this Response and Amendment. However, should any other fees be necessitated hereby, authorization is hereby given to charge Deposit Account no. 11-1153 for any underpayment.

CONCLUSION

Entry of the foregoing remarks into the record of the above identified application and reconsideration of the claims is respectfully requested. An early allowance is earnestly sought.

Respectfully submitted,


James E. Pittman, Esq.
Attorney for Applicant(s)
Registration No. 47,860

KLAUBER & JACKSON
411 Hackensack Avenue
Hackensack NJ 07601
Tel: (201) 487-5800
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